Office-Supreme Court, U.S.
FILED
APR 24 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1963

No. 905

STEVE E. ANTHONY,

Petitioner,

vs.

COUNTY OF LOS ANGELES,

Respondent.

PETITION FOR REHEARING.

LEONIDAS P. ECONOM,
c/o PAUL HILL,
6331 Hollywood Boulevard,
1001 Guaranty Building,
Los Angeles 28, California,
Counsel for the Petitioner.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

SUBJECT INDEX

	Page
Grounds for rehearing	1
Attorney's certificate	2
Grounds for stay	3
Opinion below	4
Jurisdiction	4
Questions presented	5
Constitutional and statutory provisions involved	11
Statement	12
Reasons for granting the writ	13
Conclusions	27

INDEX TO APPENDICES

Appendix A—United States Code Annotated	1
Appendix B—Opinion of the District Court of Appeal	2
Appendix C—California Government Code	9
Appendix D—The Constitution of the United States	13
Appendix E—Pleadings	14
Appendix F—Testimony on Public Use	16
Appendix G—California Code of Civil Procedure	19
Appendix H—Testimony on Damages	21

TABLE OF AUTHORITIES CITED

Cases	Page
Berman v. Parker, 348 U. S. 26, 99 L. Ed. 27	5, 12, 14, 15, 22, 26
Cole v. LaGrange, 113 U. S. 1	23
County of Los Angeles v. Anthony, 224 A. C. A. 118	4, 5
Kohl v. United States, 91 U. S. 372	16
Los Angeles County v. Pan American Dev. Corp., 146 Cal. App. 2d 15, 303 P. 2d 61	25
Merced Dredging Co. v. Merced County, 67 F. Supp. 598	23
Missouri Pacific R.R. v. Nebraska, 164 U. S. 417, 17 S. Ct. 130, 41 L. Ed. 489	23
Rabinoff v. District Court, 358 P. 2d 879, 360 P. 2d 114	18
Redondo Beach School Dist. v. Fladine, 153 Cal. App. 2d 437, 314 P. 2d 581	25
Town Board of Town of Islip v. Fishman, 230 N. Y. Supp. 2d 293	16
Town of Huntington v. Lustig, 226 N. Y. Supp. 2d 169	16
United States v. 23.91229 Acres of Land, 192 F. Supp. 101	22

Rules	
Rules of the United States Supreme Court, Rule 19	1, 4
Rules of the United States Supreme Court, Rule 23	1, 2
Rules of the United States Supreme Court, Rule 58	2

Statutes	Page
California Code of Civil Procedure, Sec. 1845.5	25
California Code of Civil Procedure, Sec. 1241(2)	7, 8, 9, 10, 11, 12, 13, 25, 27
California Government Code, Sec. 25351.3	9, 11, 27
California Government Code, Sec. 25351.3(a)	7, 8, 11
California Government Code, Sec. 25351.3(b)	7
California Government Code, Sec. 25351.4	11, 27
California Government Code, Sec. 25351.4(e)	7, 11
California Government Code, Sec. 25351.35	7, 11, 15, 27
United States Code, Title 28, Sec. 2101	3, 11
United States Constitution, First Amendment	8, 9, 10, 11, 12
United States Constitution, Fifth Amendment	5, 7, 8, 9, 10, 11, 12, 13, 2
United States Constitution, Fourteenth Amendment	5, 7, 8, 9, 11, 13

IN THE

Supreme Court of the United States

October Term, 1963

No. 905

STEVE E. ANTHONY,

Petitioner,

vs.

COUNTY OF LOS ANGELES,

Respondent.

PETITION FOR REHEARING.

Grounds for Rehearing.

The original petition for Certiorari was defective. It failed in many substantial respects to comply with Rules 19 and 23 of the Rules of this Court. Since the original petition was denied without opinion the undersigned believes that the denial was by reason of said noncompliance and not upon the merits. The undersigned asks reconsideration on the merits of the petition herein which restates and modifies many of the grounds used in the original petition but corrects the aforesaid defects. References are made to the record citing the specific errors alleged. Citations of statutory and case law are pointed to the specific grounds urged. In addition substantial new grounds available to petitioner were not stated in the original petition. They are set forth herein.

The original petition was done hurriedly and failed to clearly state all of the material facts, points of law, and substantial arguments. Petitioner prays leave pursuant to Rule 58 of the Rules of this Court to have his petition as modified and restated herein reconsidered. Said errors were made in good faith because of the pressure of time and lack of funds.

Attorney's Certificate.

I, the undersigned counsel in the above cause do hereby certify pursuant to Rule 58 of the Rules of this Court that the above petition for rehearing is presented in good faith and not for delay. The original petition for certiorari was defective. It failed in many substantial respects to comply with Rule 23 of the Rules of this Court. Since the original petition was denied without opinion the undersigned believes that the denial was by reason of said non-compliance and not upon the merits. The undersigned asks reconsideration on the merits of the petition herein which restates and modifies many of the grounds used in the original petition but corrects the aforesaid defects. In addition substantial new grounds available to petitioner were not stated in the original petition. They are set forth herein. The undersigned respectfully asks consideration thereof.

LEONIDAS P. ECONOM.
Counsel for Petitioner.

Grounds for Stay.

A stay is sought pursuant to Title 28 of the United States Code, Section 2101. (Appendix A herein.)

A stay of enforcement of the judgment herein is essential to the preservation of the status quo concerning the rights of the parties until the same can be finally determined by this Court. Unless a stay of enforcement of the judgment is granted, petitioner and the public will be irreparably injured, in that petitioner has been ousted from his homestead and his home physically destroyed. The Museum construction will soon commence.

On or about February 21, 1964, petitioner made application to The Supreme Court of the State of California for an order staying enforcement of the judgment for respondent herein, upon a writ of supersedeas. On February 26, 1964 The Supreme Court of the State of California denied, without opinion petitioner's said application for a writ of supersedeas.

On February 29, 1964, by telegraphic notice of motion petitioner moved this Court for a stay pending determination of this Writ of Certiorari. Thereafter, on the same day respondent's counsel orally stipulated to the stay, this petition to be filed by March 10, 1964. Petitioner thereafter on March 1, 1964, asked that said application for a stay be held in abeyance. Respondent has since Denial of Certiorari on 3/30/64 taken action to enforce this judgment. On April 14th by telegraphic application a stay was applied for and on that date denied by Mr. Justice Brennan. Petitioner has exhausted his remedies to the highest Court of the State of California seeking a stay and been denied. Being without other recourse petitioner renews his Application For a Stay of Execution.

Opinion Below.

The opinion of the District Court of Appeal, Second Appellate District, State of California, is reported as *County of Los Angeles v. Anthony*, 224 A. C. A. 118. (Copy annexed Appendix: B.) The California Supreme Court affirmed said decision without opinion. The trial Court rendered no opinion. The Petition for Certiorari was denied by this Court on March 30, 1964, without opinion.

Jurisdiction.

The judgment of the Superior Court County of Los Angeles was made and entered on February 4th, 1963 about 2 P.M. Said judgment was affirmed by the aforesaid decision of the said District Court of Appeal on 1/14/64 about 10 A.M. The decision of the said District Court of Appeal was in turn affirmed by the aforesaid decision of the Supreme Court of the State of California, the highest Court of that State on 2/26/64 about 11 A.M.

Plaintiff has exhausted his remedies in the State of California. Jurisdiction of this Court is invoked under Rule 19 of the Rules of this Court seeking review of said decision of the said California Supreme Court. There are special and important reasons to grant Certiorari: (a) the said State Court has decided Federal questions not heretofore determined by this Court, as hereinafter more fully set forth under Question Presented: said State Court has decided further Federal questions in a way not in accord with applicable decisions of this Court as hereinafter set forth under Reasons for Granting the Writ (b) said State Court has departed from the accepted and usual course of judicial procedure so as to call for and exercise of

this Court's supervision under the due process clause and the equal protection clause of the Fifth and Fourteenth Amendments of the U. S. Constitution as hereinafter set forth under Reasons for Granting the Writ.

The power to seize is equated with the power to legislate. This is a matter of great public concern. A tremendous precedent has been set by the denial of certiorari herein. This holding violates and expands *Berman v. Parker*, 348 U. S. 26, 99 L. Ed. 27. Eminent domain becomes an instrument to fulfill any legislative purpose—that is the rule of the "Anthony case". [*Anthony v. County of Los Angeles*, October Term, Case No. 905, decided March 30, 1964. Certiorari denied. *County of L.A. v. Anthony*, 224 A. C. A. 118].

The rule of construction and the rule of appellate review established by the *Anthony* case is that the Courts will not question or review the power of the legislature—from "well nigh conclusive" we go to the rule of construction that legislative acts are absolutely conclusive. The administrative rule established by the *Anthony* case is that administrative action is also absolutely conclusive, no longer reviewable on appeal or at the trial level even upon an allegation of fraud arbitrariness or corruption. This holding sweeps away the remnants of the rule of "checks and balances" a fundamental constitutional precept. By the holdings in the *Anthony* case all the constitutional instruments to check governmental growth and abuse are completely destroyed. The State has succeeded in suppressing the people, in perpetuating itself, and in raising itself beyond the power and control of the people. The right of a citizen to check government, to attack the constitutional sufficiency of legislative and administrative ac-

tion by judicial review are permanently silenced by destroying the right to be judically heard at the trial and appellate levels. Thus, due process is officially dead. Monster state with its silent partner of special private interests now rule by force, by force of the power of the people—the law—turned upon the people. A private citizen Steve Anthony, saw the constitutional enemy, the danger, and fought it. He is being beaten and prosecuted by the State by every unconstitutional means—and the State (here Court) closes its eyes. But now the entire public is aware, alarmed. The Court itself is now on trial before the people, as to whether it will accept constitutional limitations and accept its accountability to the people. The State has broken down the people's respect for authority because the exercise thereof is without constitutional foundation. The public is invited to abandon civilized legal recourse and to revert to primitive force and violence. Riots by frustrated citizens across the nation are threatening. Steve Anthony's legal stand has become both a symbol and a signal—a symbol of resistance to an overpowerful state, and a signal to the people to act there-against in the battle for freedom. It cannot be snuffed out by judicial stuffiness. The people are the public power. The people are the law. The people by their majority . . . rule. The State no longer represents the people when it oppresses the majority. The State loses its mandate by violating its oath to serve, and by ignoring constitutional limitations. We may only hope that the continued protest of the people will be confined to ballot action and constitutional amendments to reconstitutionalize the State. The danger of civil insurrection however is clear and present. The only alternative, the solution, is for the State to recognize the im-

portance of the grass root rebellion, for the Court to hear this petition, and reverse its decision and its holdings herein. A denial of this petition will be a signal to modern minute men to take constitutional political action against the State.

Questions Presented.

Whether California Government Code 25351.3 Subdivision (a) Appendix C herein providing that the State may acquire land for motion picture and television museums—violated the Fifth and Fourteenth Amendments to the United States Constitution (Appendix D herein); and whether said section constitutionally permits the use of eminent domain, within said amendments.

Whether Section 25351.3(b) of said code providing that said museum may be operated on lease to a nonprofit association—violated the Fifth and Fourteenth Amendments to the United States Constitution, as above set forth.

Whether Section 25351.35 of said code providing that such lease involving obligation in excess of one million dollars shall be submitted to the voters for approval was shown to have been complied with so as to provide the jurisdictional foundation for the seizure herein.

Whether Section 25351.4(c) permitting rental of offices to serve the interests of the motion picture or television industries as a whole—and not the interest of the general public—violated the Fifth and Fourteenth Amendments to the United States Constitution requiring due process.

Whether the California Code of Civil Procedure, Section 1241(2) providing in substance that the legisla-

tive and administrative determinations of public interest, public necessity and necessity for the particular property shall be conclusive as a matter of law, violated the Fifth and Fourteenth Amendments to the United States Constitution requiring due process.

Whether acquisition by eminent domain was authorized by 25351.3 Subdivision A, California Government Code (Appendix C herein).

Whether the administrative and judicial interpretation of such statute implying eminent domain was constitutional under the Fifth and Fourteenth Amendments [due process] of the U. S. Constitution.

Whether said enabling statute (Appendix C) was reasonable by whether there were sufficient findings of fact and conclusions of law by the legislature to support its determination of public necessity for a special interest industrial museum.

Whether the State Supreme Court was correct in affirming the holding of the trial Court (First & Fifth Amendment: Clk. Tr. p. 3, lines 30-32; p. 4, lines 1-16; Clk. Tr. p. 12, lines 11-25; Rep. Tr. p. 11, lines 2-26; p. 12, lines 1-12; Rep. Tr. p. 10, lines 21-25; Rep. Tr. p. 71, lines 6-26; p. 72; p. 73, lines 1-5. Section 1241 (2) California Code of Civil Procedure; and see Appendix E, F, & G.) that the said enabling legislation and the said resolution were not reviewable on any grounds.

Whether the affirmative defense of arbitrariness, fraud, or corruption in the resolution sufficiently raised by the pleadings and the offer of proof (see Appendix E & F herein) was properly suppressed by the trial Court (First & Fifth Amendment: Clk. Tr. p. 3, lines 30-32; p. 4, lines 1-16; Clk. Tr. p. 12, lines 11-25; Rep.

Tr. p. 11, lines 2-26; p. 12, lines 1-12. Rep. Tr. p. 10, lines 21-25; Rep. Tr. p. 71, lines 6-26; p. 72; p. 73, lines 1-5. Section 1241(2) California Code of Civil Procedure; and see Appendix E, F, & G.) and whether said suppression was properly upheld by the highest appeal Court of California (see Appendix B); and whether this holding violates due process under the Fifth and Fourteenth Amendments of the U. S. Constitution.

Whether the character of the use—a motion picture and TV museum—comes within the concept of public necessity. Whether general welfare is a sufficient foundation to invoke seizure power of eminent domain. Whether the enabling statute, the aforesaid section 25351.3, was an unconstitutional expansion of the power of eminent domain violating the due process clause of the United States Constitution.

Whether the manner of ownership operation and control of the condemned property herein described is such as to substantiate the conclusion that the use was public one in fact or in name only.

Was the main purpose to serve public interest and necessity with private profit incidental thereto or to serve special interests, namely promote a trade show for a special industry, at public expense, but without public consent.

Whether the Court should have allowed evidence of private use, private profits and private controls (First & Fifth Amendment; Clk. Tr. p. 3, lines 30-32; p. 4, lines 1-16; Clk. Tr. p. 12, lines 11-25; Rep. Tr. p. 11, lines 2-26; p. 12, lines 1-12. Rep. Tr. p. 10, lines 21-25; Rep. Tr. p. 71, lines 6-26; p. 72; p. 73, lines 1-5. Section 1241 (2) California Code of Civil Procedure; and see Appendix E, F, & G.).

Whether the Court's ruling as a matter of law without any evidence in support and without allowing controverting evidence (rendering it a determination by the Court) constituted a denial of plaintiff's right to a trial upon this question. Whether the Court should have excluded evidence of present intent to operate privately under the guise of public use and also excluded evidence showing a present lease, turning over management operation, control and profits to private parties, holding thereby as a matter of law that said evidence was irrelevant (First & Fifth Amendment; Clk. Tr. p. 3, lines 30-32; p. 4, lines 1-16; Clk. Tr. p. 12, lines 11-25; Rep. Tr. p. 11, lines 2-26; p. 12, lines 1-12. Rep. Tr. p. 10, lines 21-25; Rep. Tr. p. 71, lines 6-26; p. 72; p. 73, lines 1-5. Section 1241 (2) California Code of Civil Procedure; and see Appendix E, F, & G). Accordingly it took no evidence on the issue of restrictions on the manner of operation in a case where the public is not to be the operator. Whether it was a violation both of the rights of free speech and freedom of expression as guaranteed by the United States Constitution (See Appendix D) to turn over to private interests policy making power over mass media, affecting and forming public opinion. Similarly private management power over admission charges, hours, days, restaurants, service of alcohol, without restriction could cause operation as a private club violating personal constitutional rights. This could lead to racial and religious discrimination. Operation would be for profit rather than for public service. Policy concerning sex, morality, political views can be shaped according to the opinions and interests of the private directors subject only to inadequate controls.

Constitutional and Statutory Provisions Involved.

The Constitutional and Statutory provisions which are relevant to the decision of this case, and the pertinent text of which is set forth in Appendix, are Amendments I, V, and XIV of the United States Constitution; and Sections 25351.3 and 3.5 and 25351.4 of the California Government Code (Appendix C) and Title 28 of the United States Code, Section 2101 (Appendix A) and California Code of Civil Procedure, Section 1241 (2) (Appendix G).

The pertinent portions of the above are in substance as follows: First Amendment concerning free speech; Fifth Amendment concerning deprivation of property without due process; and just compensation upon taking property for public use; Fourteenth Amendment extending due process to action by State government; requirement of equal protection of the law.

Title 28, Section 2101 providing for a stay of execution on this petition. California Government Code 25351.3 Subdivision (a) The state may acquire land for motion picture and television museums. (b) Same may be operated on lease to a nonprofit association.

Section 25351.35 providing that such lease involving obligation in excess of one million dollars shall be submitted to the voters for approval.

Section 25351.4(c) permitting rental of offices to serve the interests of the motion picture or television industries as a whole—and not the interest of the general public.

The California Code of Civil Procedure, Section 1241 (2) providing in substance that the legislative and administrative determinations of public interests, public

necessity and necessity for the particular property shall be conclusive as a matter of law.

Statement.

The procedural facts herein show that the question of constitutionality of the use of eminent domain for a trade museum was properly raised (First & Fifth Amendment; Clk. Tr. p. 3, lines 30-32; p. 4, lines 1-16; Clk. Tr. p. 12, lines 11-25; Rep. Tr. p. 11, lines 2-26; p. 12, lines 1-12. Rep. Tr. p. 10, lines 21-25; Rep. Tr. p. 71, lines 6-26; p. 72; p. 3, lines 1-5. Section 1241 (2) California Code of Civil Procedure; and see Appendix E, F, & G). They also show that the question of fraud or spoliation by private operation was properly raised (First & Fifth Amendment; Clk. Tr. p. 3, lines 30-32; p. 4, lines 1-16; Clk. Tr. p. 12, lines 11-25; Rep. Tr. p. 11, lines 2-26; p. 12, lines 1-12. Rep. Tr. p. 10, lines 21-25; Rep. Tr. p. 71, lines 6-26; p. 72; p. 73, lines 1-5. Section 1241(2) California Code of Civil Procedure; and see Appendix E, F, & G). The Trial Court mistakingly held that the remedy must be by way of taxpayer suit where fraud is alleged.—The Courts misinterpreted and misapplied Berman against Parker (*supra*). The Courts confused and substituted the defense of fraud with the principle in the *Berman v. Parker* case that incidental private benefits did not render private operation and control of a public project unconstitutional. A taxpayer suit would only provide damages. Only by allowing the defense of fraud in the condemnation proceeding can an unlawful taking and fraud and irreparable harm be prevented. Equitable relief is called for and justified.

The defendant by way of his answer to the Complaint (First & Fifth Amendment; Clk. Tr. p. 8, lines

30-32; p. 4, lines 1-10; Clk. Tr. p. 12, lines 11-25; Rep. Tr. p. 11, lines 2-20; p. 12, lines 1-12. Rep. Tr. p. 10, lines 21-25; Rep. Tr. p. 71, lines 6-26; p. 72; p. 73, lines 1-5. Section 1241 (2) California Code of Civil Procedure; and see Appendix E, F, & G) denied that the foregoing described property sought to be condemned, was for public interest, or for public use, or for a public necessity; and further denied that the Governing Board for the County of Los Angeles had the legal authority or had directive power to condemn private property and the fee simple thereto, for the purpose of erecting buildings thereupon, other than for the public necessity. And for an affirmative defense, defendant alleges spoliation, fraud and corruption:

"Neither the Court nor the Jury had any evidence before it or them, whereby they could ascertain the purpose of the acquisition of the land for which it was to be used in its final determination, except statements of the County Counsel and a presumed resolution of the Board of Supervisors.

Reasons for Granting the Writ.

The decision of the said Supreme Court of the State of California should be reviewed because it erroneously interprets the Fifth and Fourteenth Amendments of the U.S. Constitution, disrupts the orderly process of government, unconstitutionally authorizes State governments to expand land grabs under eminent domain, encourages and permits spoliation, incites public disturbances and insecurity, causes disparity between the States in the interpretation of the Federal constitutional limitation on eminent domain, violates and impairs the sacred rights of private property, of free speech, and augments the growth of unconstitutional governmental

power at all levels to wit: legislative, administrative and judicial. Established rules of judicial review of legislative action, of administrative action, of judicial procedure at the trial and appellate levels—all these are impaired by the said decision herein. This decision and the governmental trend throughout the nation which this decision reflects has created a state of national crisis and emergency over property rights and due process. The decision herein sought to be reversed conflicts with *Berman v. Parker*, *supra*. The public interest has no other remedy than a review by this Court. It is not simply a matter of damage to the petitioner or of reversible errors. By upholding a bad ruling this Court will be setting a new and violent precedent authorizing further public seizures and creating uncertainty on the part of the legislative and administrative branches of the various States. This will lead to further confusion, disparity and uncertainty in the law of eminent domain and of due process and invite still further encroachments. This holding goes so far beyond Berman against Parker as to allow eminent domain for any reason which a legislature may see fit to declare. It will no longer be limited to police power, to prevention or elimination of hazards, to the public health, safety or morals. This was not the holding of Berman against Parker. The facts are distinguishable. There the police power was involved. There the general public was allegedly being served. There private benefits were held to be incidental. There, there were sufficient con-

trols to insure that the public interest would in fact be served.

The Court should recant the unfortunate dicta of *Berman v. Parker, supra*, together with its evil implications and consequences, concerning the abandonment of judicial review of legislative and administrative action concerning the extension of eminent domain, and implied approval of spoliation.

The legislative act if it is construed to authorize taking by eminent domain is unreasonable and therefore unconstitutional under the due process clause.

A new trial should be granted to test the reasonableness of the enabling act and the sufficiency of the legislative foundation.

The resolution authorizing the museum should be tested upon a trial on the defense of arbitrariness, corruption and fraud. Factors such as public notice of the intended resolution, sufficiency of public hearings supporting the said resolution, a review of public demand, public necessity, public support of the museum, should be had. The financing should be reviewed upon trial pursuant to Section 25351.35 to determine whether approval by general election was required and if so, whether the requirement was fulfilled. (Appendix C).

POINT ONE: The type of use, a television and motion picture museum, is not of such character as to meet the test of public necessity.

There is no precedent for such use being held sufficient for exercise of the power of eminent domain. This use is more analogous to public monuments. It should and could be established by government voluntarily, without the use of eminent domain. The use does not require a particular location. Further, there is no "necessity" in this type of use. There is no changes in conditions such as to warrant an expansion of th ist of permissible uses. The particular type of museum sought to be established is not "public" in nature. It is more in the nature of a trade museum. On balance it may be said to be more for the benefit of a particular trade and a particular private industry than the public in general.

Kohl v. United States (Ohio, 1870), 91 U. S. 372.

Three recent New York cases have restricted definitional expansion. It was held that land could not be condemned for a park or beach in the absence of permission referenda required by law.

Town of Huntington v. Lustig, 226 N. Y. Supp. 2d 169 (March 1962);

Town Board of Town of Islip v. Fishman, 230 N. Y. Supp. 2d 293 (July 1962).

It would seem that a museum is an even lesser public use, not warranting the exercise of the harsh power of condemnation.

POINT TWO: Where a public use is to be effected by private ownership, operation and control, the specific circumstances must be judicially tested to assure that the public interest will in fact be served.

First the regulations and restrictions on the private operators must be such as to assure this result. The operator must be in the nature of a public service corporation regulated by a public agency in the nature of a public service commission. Secondly, where benefits flow to private parties the manner of operation and control must be presently tested to assure: (a) the main benefits will be reserved to, or revert to the public, and (b) no more than limited benefits shall flow to the private operators.

On a taking under eminent domain restrictive covenance to run with the land should be made express conditions of the taking in the proceeding to prevent non-performance of the stated purpose of the taking, and to prevent later fraud or spoliation.

The new trend of accomplishing public purposes through private ownership, operation or control is dangerous and therefore, should be carefully restricted.

This trend when coupled with an expansion of the power of eminent domain leads to further governmental control of the political, economic and cultural phases of our way of life. These functions are moved from the private to the public sectors with the attendant evil of benefit to special interests and self-perpetuation by civil servants.

The legislature may choose the best means of accomplishing a public purpose. But the presumption should be against private operation. There should be a

clear showing why this exceptional method should be used. In the cases of public utilities and urban redevelopment it can be shown that the Government needs private businessmen to accomplish these purposes. It can be shown that a limited profit incentive must be offered them to draw them from other competitive lures. Further they must be protected against the risk of loss by governmental guaranty of small, but certain profits. The instant case does not meet this test. Can it be said that a private film mogul or a Madison Avenue type promoter can stand up against a public curator. Predatory birds are hardly fit keepers of public taste, morality and art forms, nor should they be given public power to control or influence public thought and expression. Under the holding of this case they can set standards according to their own commercial needs and justify them as "public museum". There is no public service commission to oversee them.

Rabinoff v. District Court, 358 P. 2d 879 (Jan. 1961). Adhered to on Rehearing 366 P. 2d 114.

In the case cited the dissent criticized strongly ". . . the direction of unrestrained exercise of totalitarian and potentially tyrannical power by those in positions of governmental authority. . . ."

The dissent relied strongly on the constitutional requirements that property must be condemned for a public use and that individual constitutional rights must be maintained in the face of the threat of the "new dictator agency".

The better view is to restrict the concept of public use to established cases of public necessity. Before

further encroachment on private property rights a clear showing of public necessity should be established by public referendum leading to legislative enactment. Private operation of public functions should be frowned upon unless it can clearly be shown that this function can not be performed directly by Government or that it can be better performed by private operation. Private operation should require supervision by a public service commission, and performance by a limited profit public service corporation. Even so called "incidental functions" such as restaurants, parking, and other functions which may be concessioned out to private parties should be clearly incidental to the main purpose and subject to public supervision and control. Unless particular property can be shown to be essential to the carrying out even of a legitimate public function eminent domain should not be used. To establish necessity it should be shown that the particular property is essential because of its location, and because no substitute property is available to the Government by means of purchase on the open market. Additionally before divesting the property owner of his rights the harm to him should also be considered as a circumstance. The public benefit should clearly outweigh in the balance the harm caused to the private citizen. Here, a man is being deprived of his homestead. The property is located in a teeming commercial area with great promise of increasing value. The Government has available to it alternate and better locations by direct purchase. The function for which the property is sought does not involve the general public, nor is it essential. As Judge Frantz said in the above dissent "How can those of humble means acquire and hold property; Where will the evicted person go?"

Forced migration is normally offensive especially when forced on people presently inoffensive. And so it was with Mr. Anthony who found himself confronted with bulldozers, shot guns and tear gas as he attempted to lawfully defend his property against a governmental abuse—then false arrest and battery.

Under the California view the people are being sold out in the area of conflict between governmental power over the people, and the limitations thereof fixed by the Constitution. The power of the people exercised by public referendum, ballot box, jury action and right to judicial recourse have been impaired. This is a Government of the people, by the Government for the Government. Public officials are invited to be arbitrary, capricious high-handed, self-perpetuating, and to serve special private interests. We suggest nothing radical or retrogressive as an end. We advocate the Constitution. We have faith, and believe that this is the only way to change. We advocate maintenance of a rule of law, uniform, just and independent of the man and the moment. The real issue, here, already stated, is whether we are to have ever-more powerful public servants, and whether they are *to* be relieved of constitutional fetters. California has declared itself on the rate of this trend—expedition thereof to the maximum. Government on the one hand, the people and the Constitution on the other—in battle relation. An attitude of defiance towards the people, resentment of restriction on power, of superiority over the people, treating them as wards—all these are the very conditions that the spirit of our Constitution abhors. We must recognize that even a democratic form of Government with a constitution is vulnerable to abuse and control by the few. Erosive legal semantics to

expand power and evade limitations are unconstitutional amendment processes.

POINT THREE: Petitioner's procedural rights as secured by due process were violated. Petitioner was entitled to a trial on all the issues raised as set forth under Questions Presented herein. No trial was had on any issue except damages.

At the legislative level a public referendum would be a requisite in order to extend the list of uses granting the legislature further power under eminent domain. Unless it is a clear case of public necessity a legislative extension of power by the use of semantics is unlawful.

Enlarging legal definitions is a means of evading procedural requirements.

At the administrative level good administrative procedure required evidence and a hearing and right of objection as to whether the particular location was necessary and as to whether the plan and manner of operation sufficiently insured a public use in fact. This assumes (which we do not concede) a valid public use for the administrative agent to carry out.

At the judicial level Due Process required the following:

(a) the Government as an element of their *prima facie* case must allege a public use and either public operation or a sufficient plan of private operation to protect the public interest.

(b) These elements must first meet the aforesaid legislative and administrative requirements. They are then open to contest if issue is raised by the pleadings and proof. Thereupon the burden of

proof is on the Government. Here therefore, the burden was on the Government to show a valid public use, the need for the particular location, and a plan of operation sufficient to protect the public interest. The trial Court should have considered all of the circumstances and thereupon balance and test the public versus the private benefits. Only upon a showing that the major benefits went to the public could it be said to be a valid public use in fact. The Court should have taken evidence on the nature of the use to determine whether it was public and necessary. The Court should have reviewed the legislative determination of public necessity. The Court should have reviewed the administrative actions to determine whether or not they were arbitrary, capricious, and supported by legal authority. All of these were questions of law and fact for the Court. They were improperly ruled upon by the trial and appellate Courts. Whether or not the manner of use either was or was not intended to be for private benefit was a question of fact for the jury. Although petitioner made this charge by way of affirmative defense it was part of the Government's case. The burden of proof therefor, to show no spoliation, remained nevertheless on the Government. The Government failed to sustain its burden of proof on this point. The trial and appeal Courts improperly ruled that no proof thereon was necessary as a matter of law. The Court improperly took the question from the jury.

Berman v. Parker, supra;

United States v. 23.91229 Acres of Land, 192 F. Supp. 101 (March 1961);

Merced Dredging Co. v. Merced County (D. C. Cal. 1946), 67 F. Supp. 598;

Missouri Pacific R.R. v. Nebraska (Neb. 1896), 164 U. S. 417; 17 S. Ct. 130, 41 L. Ed. 489;

Cole v. LaGrange, 113 U. S. 1.

The people await hopefully. They put their faith in this Court to restore government to its proper position. Not for demagoguic popularity, but to gain the respect of the people which it is duty bound to earn. The respect and confidence of the people is essential to a sound democratic process. This philosophy of Government expressing the relationship between man and Government is the spirit behind the Due Process Clause.

This Court should condemn loose procedures, bold takings, and wild West justice. Wrongful exercise of eminent domain is governmental trespass. The damages are far reaching. All property owners and the general public are involved. It is a misuse of the greatest and most dangerous power—public power. Personal rights under our way of Government and life grow out of and depend upon property rights. Ethereal personal rights often depend upon spatial realization. Perhaps then they should receive the same attention from this Court as it has lately given to the perfecting of personal rights. The same set of conditions which support the present trend of Government destroyed freedom in the 17th and 18th centuries and lead to the birth of the United States and the need for a Constitution and a Bill of Rights. They are delicate things, easily destroyed. It was the peculiarly American contribution to human sociological history to resist and check Governmental power and to place the last word with the

people. The last line of the Constitutional defenders is not this Court. As it speaks for the rights and the power of the people this august Court will thereby restore and improve the constitutional concept of government.

American, your way of life rests on the security of the home. And in the last analysis the deed to your home—is the Constitution.

POINT FOUR: The constitutional right of free speech was impaired by this abuse of the power of eminent domain.

Private management has the power to dictate standards of thought and expression through control of the mass media of television and motion pictures. This area of activity should be left free of Government control. In no event, should it be delegated to private interests, without constitutionally sufficient conditions, subject to judicial review.

POINT FIVE: State views have developed which are inconsistent with each other upon this federal right causing unequal protection under the law in reference to the interpretation of public use in the various states.

The tests applied by the various States as to what facts and circumstances render the use in fact a private one, although designated as public are varied and unequal.

POINT SIX: Inadequate and unjust compensation was awarded by reason of improper exclusion of evidence which tended to show future increase in value, value of comparable properties, and value under highest

zoning use (Rep. Tr. p. 54, lines 21-26; p. 55; p. 56, lines 1-9; Rep. Tr. p. 190, lines 10-23. See Code of Civil Procedure, Sec. 1845.5; See Appendix H).

> "Under certain circumstances the probability of a change in zone may be shown."
>
> *Redondo Beach School Dist. v. Flodine*, 133 Cal. App. 2d 437, 314 P. 2d 581.

> "In determining the market value of property taken in condemnation proceedings, a proper consideration is the convenient or inconvenient location of the property with respect to other property in the vicinity."
>
> *Los Angeles County v. Pan American Dev. Corp.*, 146 Cal. App. 2d 15, 303 P. 2d 61.

The trial Court abused its discretion by ruling out evidence pertaining to the classification, and the type of the real property of said defendant and appellant, or the true value thereof, based upon its best use, whereby the Jury was guided or misled as to the relative or actual and or comparable value of defendant's premises in comparison to the value of the land immediately adjacent and in close proximity thereto.

A sufficient record was made for appellate review of damages. This contention was properly presented for appeal. The District Court of Appeal holding (Appendix B) to the contrary is unconstitutional in that just compensation is denied in violation of the 5th Amendment (Appendix D).

POINT SEVEN: California *Code of Civil Procedure* Section 1241(2) (Appendix G) providing that the en-

abling act in question and the resolution in question shall be conclusive on the issue of public necessity is unconstitutional under the due process clause. It violates the rules laid down by this Court in *Berman v. Parker*, 348 U. S. 26, 99 L. Ed. 27 (Appendix G).

Whether granted or denied, these arguments will set the record straight. We can hope for changes in the future, when the air is clear and free. The company is better when we leave Leviathian state and join the commoners in array. Sadistic and predatory types temporarily may capture the power of the State while simple quiet men of good will lie back and attend to private affairs alone. Emphathic types may be side-tracked or frustrated. Those that are not may find that integrity and courage are a poor match for raw power of the State. Thus we learn to yield the ideals of youth and constitutionalism—but what shall we tell our children—the means justify the ends, blinkers on to injustice—the favored will take care of their own—but the ninth commandment shows the higher law.

The battle may be yours, Sir State—but not the war for freedom. Where principle is greater than victory, temporary defeat and sacrifice are noble. The State has stirred and united the people; awakening the peacefully sleeping Bear. Now, a test of strength and methods, against the voice and might of the people—united. The word, the law, the right, the people, unity, plus the higher power of the Lord—this is a combination mightier even than Leviathian State. The state of this war resembles the falsified intellectualism, the hypocritical, prostituted godless slavery and decadence of the Roman state felled by the Judo-Christian epoch.

Conclusions.

For the foregoing reasons it is respectfully urged that this Petition for Rehearing be granted and that further consideration be given, and that the decision of the Supreme Court of the State of California be reversed; and that a Writ of Certiorari issue to the said Court:

(1) that the petition for rehearing of the Writ of Certiorari be granted;

(2) that the enforcement and execution of the judgment sought to be reviewed be stayed pending final determination of this writ and the *status quo* maintained;

(3) that oral argument be granted;

(4) that the judgment appealed from be vacated and set aside and the action dismissed;

(5) that sections 25351.3, 25351.35 and 25351.4 of the California Government Code be declared unconstitutional; and that California Code of Civil Procedure Section 1241(2) (Appendix G) be declared unconstitutional.

(6) that the procedure followed by the legislative, administrative and judicial bodies herein be declared unconstitutional on each of the several grounds set forth herein;

(7) in the alternative, that a new trial be granted;

(8) that such other and further relief as the Court may deem fit under the circumstances be granted.

LEONIDAS P. ECONOM,
Counsel for the Petitioner.

APPENDIX A.

United States Code Annotated.

Title 28. Section 2101

". . . (c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days."

"(f) In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period alloted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer all damages and costs which the other party may sustain by reason of the stay . . . ."

APPENDIX B.

Opinion of the District Court of Appeal.

[Civil No. 27508. Second Appellate District, Division Four. Filed January 14, 1964. J. T. Alley, Clerk.]

County of Los Angeles, Plaintiff and Respondent, vs. Steve E. Anthony, Defendant and Appellant.

Appeal from a judgment of the Superior Court, Los Angeles County, Aubrey N. Irwin, Judge. Affirmed. Petition for writ of supersedeas. Denied.

Interlocutory judgment of condemnation affirmed; petition for supersedeas to stay order of immediate possession denied.

Paul Hill for Defendant and Appellant.

Harold W. Kennedy, County Counsel, and Thomas W. Stoever, Deputy County Counsel, for Plaintiff and Respondent.

This is an appeal by Steve E. Anthony from a judgment in a condemnation action awarding him $11,750 for his one-half interest in property condemned for the erection of the Hollywood Motion Picture and Television Museum.

On January 9, 1962, the Board of Supervisors of Los Angeles County adopted a resolution determining that public necessity required the acquisition of defendant's property, among other parcels, as the site for the Hollywood Motion Picture and Television Museum. The county then invoked condemnation proceedings against appellant and others to condemn fee simple title in such property.

We are concerned on this appeal only with the proceedings relating to the acquisition of appellant's interest in one parcel.

The chief point raised by appellant is that he was improperly prevented from showing that his property was to be taken for other than a public use. In his answer to the complaint, he alleged:

> "That the purpose for which the said land is to be taken by eminent domain is not for a public use, but contrary is a private purpose to cause ownership of land to be taken from private ownership of land to be taken from private owners [sic] and turned over to other private persons for their profit, and that any public benefit to accrue from the said Museum is merely incidental thereto."

At the trial, appellant made the following offer of proof:[1]

> ". . . They [the Hollywood Museum Association] have entered into agreements with the County of Los Angeles whereby they are having a separate independent leasing corporation, leasing out prospective space in this so-called museum.
>
> "They are also engaging building contractors for the purpose of erecting this building upon this County ground, and it is my intent and purpose to prove that the Hollywood Museum is merely a front of some kind under the guise of eminent domain and under the guise of a public body to put

[1]Respondent points out that the offer of proof did not come until proceedings before the jury had begun and that, if admissible at all, such evidence was for the judge and not for the jury. However, the offer was not rejected on that ground and we consider the offer, as did the trial court, as an amplification and specification of the general language of the answer.

> up a private enterprise to be used for the next 30 years, and this separate income is to go into these various corporations that are going to build this building, run this museum, run the restaurant, and run other concessions within the building for a profit which the County does not participate in."

The trial court refused to permit testimony of the issue of public use, ruling that the existence of public use was shown as a matter of law. The trial to the jury was only on the issue of damages. Appellant, relying on *People v. Nahabedian* (1959), 171 Cal.App.2d 302, urges this action as error.

It is, of course, too well settled to require citation that property cannot be taken by condemnation unless such taking is for a public use. Consequently, we are faced with two questions: (1) is a motion picture and television museum a "public use"; and (2) did appellant's pleading and offer of proof adequately raise an issue as to the existence of such a use in this case.

Section 25351.3 of the Government Code, as it read at the time this condemnation proceeding was instituted, in part provided:

> "In addition to its other powers and duties the board may:
>
> "(a) Acquire land for and construct, lease, sublease, build, furnish, refurnish or repair buildings for . . . motion picture and television museums, and related facilities as places of public assembly for the use, benefit and enjoyment of the public. . . ."

As a general rule, the legislative department is the source of power to determine what shall be held to be a

public use; except in extreme cases, its action on the question is not open to review by the courts. (*Santa Ana v. Harlin* (1893) 99 Cal. 538, 542; *Con. Channel Co. v. C. P. R.R. Co.* (1876) 51 Cal. 269; 28 S. C. A. L. R. 369, 380-381.). In this case the legislative determination that a motion picture and television museum is for public uses and purposes, not being unreasonable, is binding and conclusive on this court.

However, while a legislative determination as to what is a public use, if not unreasonable, is binding upon the courts, such a determination does not preclude a person whose land is being condemned from showing at trial, that as a matter of fact, the actual use of the land will be subserved for private rather than public purposes. (*County of San Mateo v. Coburn* (1900), 130 Cal. 631; *Stratford Irr. Dist. v. Empire Water Co.* (1941) 44 Cal.App.2d 61.)

The issue before us is whether the leasing of this property to private individuals to run the museum, hopefully at a profit, constitutes a taking for private rather than public use?

This contention has been answered by *Redevelopment Agency v. Hayes* (1954) 122 Cal.App.2d 777, where the court stated (at pp. 803-804):

> ". . . there have been two different interpretations of 'public use' in this county, one the broader meaning of 'public utility or advantage,' the other narrower one of 'use, or right of use, by the public.' . . . In California our courts have followed the broader definition of 'public use' and the cases hereinbefore cited have held that if property is taken for a public use, the fact that it is later to be returned to private ownership subject to restrictions

> protecting the public use, does not make it any the less a public use. . . . Once it is determined that the taking is for a public purpose, the fact that private persons may receive benefits is not sufficient to take away from the enterprise the characteristics of a public purpose."

It will be noticed that appellant's offer of proof does not contravene the fact that the museum here involved is one that will serve a public purpose, but claims only that certain persons will make a profit from its operation. Under the California view of "public use" this offer of proof was properly excluded.

Appellant's reliance on *People v. Nahabedian, supra* (1959) 171 Cal.App.2d 302, is misplaced. In *Nahabedian*, the State of California, through its Department of Public Works, instituted condemnation proceedings to acquire certain property for state highway purposes. At trial, defendant sought to prove that the real purpose of the state's condemning his property was to lease it to Walt's Auto Park for private purposes without any relation to the highway project. Here, appellant does not contravert the fact that his property will be used for the Motion Picture and Television Museum; only that such museum will be run by private individuals who will derive a profit from its operation. As stated previously, this factor alone does not discount or negate the fact that the taking of appellant's property is for the uses stated in the complaint for condemnation, which use the Legislature has declared to be a public one. As the trial court stated, if the alleged contract by the county for construction, operation and maintenance of the museum violates any provisions of law or of the Constitution, appellant's

remedy is in an action attacking that contract and not in an attempt to defeat a proper acquisition of land for a valid public purpose.

Appellant also contends that "the trial Court abused its discretion by ruling out evidence pertaining to the classification and the type of the real property of said defendant and appellant, or the true value thereof, based upon its best use, whereby the Jury was guided or misled as to the relative or actual and/or comparable value of defendant's premises in comparison to the value of the land immediately adjacent and in close proximity thereto." We are not required to consider a point made in such general terms, without reference to the record, citation of authority or elaboration. (3 Witkin, California Procedure, Appeal, §150.)

Subsequent to the entry of the interlocutory judgment of condemnation, the county secured an order for immediate possession, purportedly pursuant to section 1254 of the Code of Civil Procedure. Appellant thereafter filed in this court his petition for a writ of supersedeas to stay the effect of that order pending this appeal. We granted a temporary stay pending our further consideration of the entire matter. In *Housing Authority v. Superior Court* (1941) 18 Cal. 2d 330, the Supreme Court held that the grant or denial of an order for immediate possession lay within the discretion of the trial court, saying (at p. 340):

> "... the court to which the application for possession is addressed must be deemed to be in the best position to judge, in the first instance whether the defendants would be adequately protected by the deposit in court, if the question of the plaintiff's right to take the property should be

decided favorably to the defendants on the appeal. The trial court should also be considered the best judge of whether the project will be retarded by the fact that the [condemnor] does not have possession of the property pending the appeal."

On authority of the case just cited, and in light of our decision of the appeal on its merits, the temporary stay heretofore granted is vacated forthwith. The judgment appealed from is affirmed: the petition for a writ of supersedas is denied.

Kingsley, *J.*

We concur:
Burke, *P. J.*
Jefferson, *J.*

APPENDIX C.

California Government Code.

Section 25351.3 Right of board to construct, repair, etc. buildings and other facilities. In addition to its other powers and duties the board may:

(a) "Acquire land for and construct, lease, sublease, build, furnish, refurnish or repair" . . . "motion picture and television museums, and related facilities as places of public assembly for the use, benefit and enjoyment of the public . . ."

(b) Acquire land and construct such buildings, structures and facilities thereon in whole or in part, with county funds or it may, by contract or lease with any *nonprofit* association or corporation, provide for the acquisition of land or the construction of such buildings, structures and facilities, or all or any part thereof, for such public purposes, upon such terms as the board may determine.

(c) Lease, pursuant to Section 25371 of this code, any real property owned by the county and available for such public purposes to any person, firm, corporation or nonprofit association or corporation for such purposes, or any thereof, such person, person, firm, corporation or nonprofit association or corporation to lease the real property as improved back to the county for use for the purposes stated in the lease. Any lease authorized by the board under this subdivision (c) shall be awarded to the lowest responsible bidder after public competitive bidding conducted in the manner determined by the board. Notice inviting bids shall be published pursuant to Section 6066 of this code in such newspaper as the board may direct.

(d) Enter into a lease or sublease, without advertising for bids therefor, of such buildings, structures and facilities or any thereof with any nonprofit association or corporation which agrees to use the buildings, structures and facilities so leased to it for the public purposes for which the same were or are to be built; or contract without advertising for bids therefore, with any nonprofit association or corporation for the maintenance, operation and management or any thereof, of such buildings, structures and facilities or any part thereof, including the scheduling and promotion of events therein for a specified term, not to exceed forty (40) years, upon such terms and conditions as may be agreed upon. Such leases, subleases or contracts shall provide that at least annually there shall be paid to the county the net revenue, if any, from the operation and use of the facilities, remaining after the payment of expenses and costs, if any, for maintenance, operation or management, interest and principal payments upon loans to the nonprofit corporation or association for purposes of maintenance, operation or management, and any other expenses, and after providing maintenance and operation reserves. Such lease, sublease or contract shall also provide that upon its expiration, all of assets of the nonprofit association or corporation after payment or discharge of its indebtedness and liabilities shall be transferred to the county.

25351.35 Same: Prerequisite approval of contract or lease involving obligation in excess of $1,000,000. In

the case of any contract or lease described in subdivision (b) of Section 25351.3, obligating the county to make payments or incur obligations of one million dollars or more, the board shall not enter into such contract or lease unless and until the board has submitted such contract or lease to the qualified electors of the county at the next general election or at a special election to be called by the board for the purpose. Any special election held for this purpose shall conform as nearly as practicable with the general election law of the State. A summary of the provisions of such contract or lease shall be placed on the ballot and space provided for marking by voters to indicate their respective approval or disapproval of the contract or lease. Only if a majority of the electors voting at such election vote to approve the lease or contract as presented, shall the board enter into such lease or contract.

For the purposes of this section, all contracts or leases pertaining to one project shall be considered as one contract or lease.

This section shall not apply to any project for which the architectural contract has been executed prior to June 1, 1961. (Added by Stats 1961 ch 2209.)

25351.4 Same: "MOTION PICTURE AND TELEVISION MUSEUMS." As used in Section 25351.3, the term "motion picture and television museums" means a museum which includes but is not limited to any one or more of the following facilities:

(a) Completely equipped sound stages suitable for demonstrating to the public the actual filming of motion picture or television sequences;

(b) Theater facilities suitable for public showings of motion picture and television films of historical or educational interest;

(c) Film archives and related facilities for the physical preservation of motion picture and television films;

(d) Restaurant and refreshment facilities for the museum staff and the visiting public;

(e) Office facilities which may be rented as general offices to one or more nonprofit corporations which serve the interests of the motion picture or television industries as a whole. (Added by Stats 1961 ch 98 2)

APPENDIX D.

The Constitution of the United States.

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT V

"No person shall . . . be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

AMENDMENT XIV

Section 1. . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any persons of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX E.

Pleadings.

Amongst other things the plaintiff alleged in the Complaint:

"That the public interest and necessity require the acquisition by plaintiff herein of the fee simple title in and to the real property sought to be condemned herein for a public use, namely, for Hollywood Motion Picture and Television Museum Site, and for such other public uses as may be authorized by law, and said public use and improvement are planned and located in a manner which will be most compatible with the greatest public good and the least private injury

"That the governing board of said plaintiff, at a regular meeting thereof held on January 9, 1962, adopted a resolution by a four-fifths vote of all its members, finding and determining that the public interest and necessity require the acquisition by plaintiff herein of the property sought to be condemned herein for Hollywood Motion Picture and Television Museum Site, and authorizing and directing the County Counsel of the County of Los Angeles to institute and prosecute an action in eminent domain to condemn the fee simple title in and to said real property for the above named purpose." [Clk. Tr. p. 3, lines 30-32; p. 4, lines 1-16].

"Defendant is informed and upon information and belief alleges that the Hollywood Motion Picture and Television Site is a site selected for a private enterprise and not for a public necessity or for a public emergency.

"That the purpose for which the said land is to be taken by eminent domain is not for a public use, but contrary, is for a private purpose to cause ownership of land to be taken from private owners and turned over to other private persons for their profit, and that any public benefit to accrue from the said Museum is merely incidental thereto. For this reason the legislation or the Authority which authorizes the seizure of land by eminent domain violates the 14th Amendment of the United States Constitution of the State of California." [Clk. Tr. p. 12, lines 11-25].

APPENDIX F.

Testimony on Public Use.

(The following proceedings were had in chambers):

"The Court: You contend in that respect the use for which the County seeks to acquire the property is not a public use; is that right?

"Mr. Hill: That is correct —

"The Court: All right.

"The court now determines as a matter of law that the use for which the condemnation suit is maintained is a public one, that the acquisition is for a public purpose. Now, it may be that the County, Mr. Hill, might violate its obligations, that is, the Board of Supervisors might violate its obligations and turn this over to some private organization and make a public donation of it; but that is a matter with which this court is not concerned at this time. If this is not to be used for a public purpose you will have a remedy which is other than this condemnation suit. I can say the only use to which this property may be devoted by the County is for a public use, to wit, a museum site. That is what they are acquiring it for. If they don't do it, why, that is another matter. I assume they are going to carry out their intentions.

"The resolution will be received in evidence as Plaintiffs' Exhibit 1.

"Any other issues to be determined at this time?

"Mr. Hill: I make an objection to the introduction of the resolution.

"The Court: Your objection is overruled.

"Mr. Stoever: There are no further issues.

"I would like to make sure that I understand this now.

"Am I correct that the only issue to be brought before the jury now is one of value, and that nothing is to be brought in on the public use issue at all?

"The Court: Nothing at all as a matter of law. The purpose is a public purpose, to wit, a museum site.

"Mr. Stoever: And the only evidence to be brought in before the jury is on value?

"The Court: Right." (Rep. Tr. p. 11, lines 2-26; p. 12, lines 1-12).

(The following proceedings were had at the bench, outside the hearing of the jury):

"Mr. Stoever: Your Honor, I have a strong suspicion of why Mr. Freeman is being called. I would ask at this time that Mr. Hill make an offer of proof as to what he intends to prove with Mr. Freeman's testimony.

"Mr. Hill: We might as well go into chambers.

"The Court: Ladies and gentlemen, just stand by for a few minutes. We have a matter to consider off the record. We are on the record, but outside your presence.

"Mr. Hill: Has the witness been sworn?

"The Court: Yes, he has been sworn."

(The following proceedings were had in chambers):

"The Court: What evidence do you intend to produce by this witness, Mr. Hill?

"Mr. Hill: He is assistant treasurer. I want to read it because I don't want to make any mistake.

He is assistant treasurer of the Hollywood Museum Association, which has entered into an agreement with the County of Los Angeles.

"The Court: They have what?

"Mr. Hill: They have entered into agreements with the County of Los Angeles whereby they are having a separate independent leasing corporation leasing out prospective space in this so-called museum.

"They are also engaging building contractors for the purpose of erecting this building upon this County ground, and it is my intent and purpose to prove that the Hollywood Museum is merely a front of some kind, under the guise of eminent domain and under the guise of a public body to put up a private enterprise to be used for the next 30 years, and this separate income is to go into these various corporations that are going to build this building, run this museum, run the restaurant, and run other concessions within the building for a profit which the County does not participate in.

"Mr. Stoever: Your Honor, I would object to the offer of proof and to any evidence that may be entered pursuant thereto as being wholly immaterial to the issue of value.

"The Court: Objection is sustained. The matter was ruled upon before we ever started the case, Mr. Hill.

"Mr. Hill: We have got the 14th Amendment of the United States Constitution which gives people the right to own property, and there are other parts of the Constitution that make it possible for private owners to own property without having any

public body take it, unless it is for a public use entirely. This is not even for partial use. This is for an entire use of the museum by firms that are going to take this over. They are not County officials, but they are private interests.

"The Court: The only issue to be submitted to this jury by prior order of this court is the issue of the amount of damages to be paid for the acquisition." (Rep. Tr. p. 71, lines 6-26; p. 72; p. 73, lines 1-5).

APPENDIX G.

California Code of Civil Procedure.

California Code of Civil Procedure, Section 1241(2) states that:

> "When * * * the legislative body of a county * * * shall, by resolution or ordinance, adopted by vote of two-thirds of all its members, have found and determined that the public interest and necessity require the acquisition, * * * by such county, * * * and that the property described in such resolution or ordinance is necessary therefor, such resolution or ordinance shall be conclusive evidence; (a) of the public necessity of such proposed public utility or public improvement; (b) that such property is necessary therefor. * * *".

APPENDIX H.

Testimony on Damages.

(On redirect examination by Mr. Hill of the witness, Mr. Smith):

"The Court: Is it zoning you wish to inquire about?

Mr. Hill: Yes.

The Court: You may inquire.

The Witness: It's R-4 and R-5, sir.

Q. By Mr. Hill: All along that side of Highland Avenue?

A. That is correct.

Q. Is there any R-4 and R-5 zoned property on the east side of Highland Avenue in and about the area here between Las Palmas and this short distance of Odin?

A. Yes, sir.

Q. And which property is there? Will you point it out to the jury so they can see it?

A. This indicates a zone line, and that is the R-5 zone. It is R-5-1. This is a zone line, and it is R-4-1.

Q. How far is that R-4-1 from the Anthony property or the Libby property, either one?

A. The R-5 or the R-4?

Q. Answer both ways. There are two questions in one, if you can answer it that way. We are talking about the zoning of both, the contemplated zone change.

A. The R-5 is about 22 feet from there. I will give you the other dimension in a second. About 150 feet. This indicates the R-5 boundaries. This indicates the R-4. So it would be these two lots.

which across the street, which would be about 125 to 150 feet.

Q. For the Libby property?

A. That is right.

Q. *But the Anthony property is closer, it's only 22 feet away from R-25.*

Is there any building or anything in front of those properties that you are talking about?

A. No. It's a parking lot, sir.

Q. Is that comparable property?

"Mr. Stoever: To which I object, your Honor. It calls for an opinion without giving facts which show it to be comparable. What facts do you really want? This is immediately adjacent to it." (Rep. Tr. p. 54, lines 21-26; p. 55; p. 56, lines 1-9)

(On cross-examination by Mr. Hill of the witness, Mr. Pratt):

"Q. By Mr. Hill: You stated that you do know something about Franklin Avenue. You so testified. Do you know where the Montecito is?

"The Court: What is that street?

"Mr. Hill: Montecito.

"The Witness: Yes, I think so.

"Q. By Mr. Hill: What is that property worth?

"Mr. Stoever: That is objected to, your Honor. The property is not comparable.

"The Court: Sustained.

Mr. Hill: It is within the immediate vicinity of where he has testified that—

The Court: His opinion as to the value of any other property is immaterial." (Rep. Tr. p. 190, lines 10-23) (See Code of Civil Procedure §1845.5).